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Typical Diversion Case Suitable for COCOM Action

The following describes how a typical diversion case might be handled by COCOM and its Secretariat.

1. The Netherlands delegate informs the COCOM Secretariat of a shipment of List I copper wire in the Rotterdam Free Port awaiting shipment to the Soviet Bloc. Information relating to the goods is limited, but it appears that they were licensed to Italy by Germany and Belgium and were rerouted from Italy without having entered Italian customs territory.

2. The Netherlands delegate requests the Secretariat to call together the other interested delegates -- Belgian, German, and Italian -- to discuss the case.

3. In order to determine responsibility for the illegal diversions various questions naturally arise; the delegates agree, as appropriate, to find out the answers to such questions as:

- a. the authenticity of the IC's and DV's;
- b. the reliability of the principals of the transactions;
- c. the routing of the shipments;
- d. where title to the goods lies;
- e. how the transactions were financed;
- f. where, on what basis, and how the shipments were redocumented through the Netherlands to the Soviet Bloc.

In view of the press of other COCOM business, the delegates request the Secretariat to assemble, analyze, and distribute information submitted by them to the other interested delegates.

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4. At the initial meeting of the interested delegates, the Netherlands Government, in addition, will be requested to detain the shipment pending completion of the investigation by the interested countries. Subsequent meetings, if required, would clarify requests for additional information.

5. Upon completion of the investigation the interested delegates will discuss responsibility for the shipment and where and how the goods can most easily be returned to the countries of origin or to the country which is otherwise responsible for the illegal diversion. Such questions as demurrage and other charges can also be resolved and agreements can be made regarding action required of the various countries. Discussions between the delegates will necessarily involve interpretations of COCOM agreements on IC/DV, transit trade, and other matters.

6. Should no agreement be reached in the small group of interested delegates with the assistance of Secretariat experts the interested delegates may propose that outstanding points of difference be submitted to the full Committee for further advice on a possible satisfactory solution of the case.

7. Should the interested governments agree it might be desirable for a summary of the case and its disposition to be presented to the full Committee for information indicating their bearing on current COCOM principles and procedures.

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Diversion Control Procedures

The channels for the coordination of diversion cases need not be fixed and arbitrary. In fact, a certain degree of flexibility is desirable. However, in view of the time urgency involved if illegal diversions are to be prevented, it is quite important that information or requests for action be handled as expeditiously as possible. It has been our experience that most cases involve the nationals of at least two, and often more, countries and that the transactions themselves have been made possible through the illegal use of export licenses, IC's, DV's, financial, transport, forwarding, and transit facilities of an equal, if not larger number of countries. Most of the transactions have been so devious that it is impossible at first glance to discover the method of diversion, which country or countries' laws or regulations were violated, and who the responsible parties are. The prevention of an illegal diversion and the subsequent satisfactory solution of the case is made more difficult by the unfamiliarity of various Embassy personnel with East-West trade controls and problems arising therefrom and their inability to cope with the refined, clandestine tactics employed by the experienced and unscrupulous international traders.

In view of the factors outlined above, and since most cases are such that they will usually be of interest to two or more Participating Countries, the use of COCOM as a central point for the coordination of diversion cases is highly desirable. It would, of course, be understood that the introduction of a case into COCOM or a request for Secretariat assistance would not be mandatory and it would be left to the judgment of the country becoming aware

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of a diversion to decide whether the case can be handled satisfactorily in some other manner. However, the use of COCOM or its secretariat would have certain definite advantages. First, it provides the only centralized place where personnel of all the PC's are available who are experienced in East-West trade matters. Where a case involves more than two member countries, no single capital offers the same opportunity for multilateral coordination to prevent the diversion and to assess the responsibility for the illegal action. Second, activities of this sort in Paris, utilizing the facilities and membership of COCOM, can provide a consolidation, evaluation, and dissemination of information to all interested governments on pending cases and a basis of experience will be given for an analysis of the effectiveness of controls and recommendations for required improvements. In addition, coordination in COCOM may enable one country to stop or prevent an illegal diversion under legal authority which a second interested country does not possess. For example, a transaction may be stopped by the denial of export licenses or by the customs authorities of the country of origin. Without proper coordination at this stage, it might be found impossible to stop the illegal shipment after it reaches a second country in a transit status. Although it is unquestionably the responsibility of each country to enforce its own laws and regulations, it is virtually impossible for any one government on its own, no matter how efficient, to cope through normal diplomatic channels with the international aspects of diversionary tactics of present-day illicit trading combinations.

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